

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	Case No. 01-1139 (JKF)
W.R. GRACE & CO., <u>et al.</u> ,	:	(Jointly Administered)
	:	
Debtors.	:	Related Doc. No. 5460, 5645, 5705, 5775

**JOINT DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL
AND STATEMENT OF ISSUES OF APPELLANTS FEDERAL INSURANCE
COMPANY AND ROYAL & SUNALLIANCE
REGARDING ORDER GRANTING APPLICATION OF DEBTORS PURSUANT TO
11 U.S.C. §§105, 327 AND 524(g)(4)(B)(i), FOR THE APPOINTMENT OF A LEGAL
REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

Appellants, Federal Insurance Company and Royal & SunAlliance (collectively the “Appellants”) by their undersigned counsel, pursuant to Bankruptcy Rule 8006 in connection with the Notices of Appeal (Docket No. 5704 filed on 6/3/2004) and (Docket No. 5775 filed on 6/10/2004) (collectively the “Appeal”) of the Bankruptcy Court’s “Order Granting Application of Debtors Pursuant to 11 U.S.C. §§105, 327 and 524(g)(4)(B)(i), for the Appointment of a Legal Representative for Future Asbestos Claimants” entered by Chief Bankruptcy Judge Fitzgerald on May 24, 2004 (Docket No. 5645) (the “Order”) sets forth the Designation of Items to be Included in the Record on Appeal and Statement of Issues as set forth below.

The following items were filed in the bankruptcy case captioned *In re W.R. Grace & Co., et al*, Case No. 01-1139 (JKF) (jointly administered):

Filing Date	Docket Number	Description
10/13/2003	4575	Application of Debtors Pursuant to 11 U.S.C. §§105, 327 and 524(g)(4)(B), for the Appointment of C. Judson Hamlin As Legal Representative for Future Claimants
10/29/2003	4621	Objection of the Unofficial Committee to Application of Debtors Pursuant to 11 U.S.C. §§105, 327, and 524 (g)(4)(B) for the Appointment of C. Judson Hamlin as Legal Representative for Future Claimants
10/29/2003	4622	Affidavit of Joanne Wills in Support of Objection of the Unofficial Committee to Application of Debtors for the Appointment of C. Judson Hamlin as Legal Representative for Future Claimants
10/30/2003	4640	Objection to United States Trustee to Application Of The Debtors for the Appointment of C. Judson Hamlin as Legal Representative for Future Claimants
10/31/2003	4644	Objection of The Official Committee of Unsecured Creditors to the Application of Debtors Pursuant to 11 U.S.C. sections 105, 327 and 524(g)(4)(B), for the Appointment of C. Judson Hamlin as Legal Representative for Future Claimants
10/31/2003	4649	London Market Insurers' Objection to Debtors' Application For The Appointment of C. Judson Hamlin as Legal Representative For Future Claimants
11/03/2003	4655	Response of the Official Committee of Asbestos Property Damage Claimants to the Debtors' Application For The Appointment of C. Judson Hamlin As Legal Representative For Future Claimants
11/03/2003	4659	Debtors' Request to Hold in Abeyance their Application For Appointment of a Future Representative, C. Judson Hamlin as Futures Representative
11/24/2003	4734	Notice of Withdrawal of Application of Debtors Pursuant to 11 U.S.C. Sections 105, 327 and 524(g)(4)(B), for the Appointment of C. Judson Hamlin As Legal Representative for Future Claimants
11/24/2003	4740	Transcript of hearing before Bankruptcy Judge Judith K. Fitzgerald on November 17, 2003
4/19/2004	5460	Application of Debtors Pursuant to 11 U.S.C. Sections 105, 327 and 524(g)(4)(B)(i), for the Appointment of a Legal Representative for Future Asbestos Claimants
5/7/2004	5536	Response of Official Committee of Equity Security Holders to Debtors' Application for the Appointment of a Legal Representative for Future Asbestos Claimants

5/7/2004	5537	Response of the Official Committee of Unsecured Creditors to the Application of the Debtors Pursuant to 11 U.S.C. Sections 105, 327 and 524(g)(4)(B)(i) for the Appointment of a Legal Representative for Future Asbestos Claimants
5/7/2004	5542	Response to Debtors' Application for the Appointment of a Legal Representative for Future Asbestos Claimants
5/7/2004	5544	Limited Objection of Certain Insurers' to Debtors' Motion to Appoint a Legal Representative for Future Asbestos Claimants
5/7/2004	5545	Response of the Official Committee of Asbestos Personal Injury Claimants to the Debtors' Application for Appointment of a Legal Representative for the Future Asbestos Claimants
5/7/2004	5547	Response and Objection of The Official Committee Of Asbestos Property Damage Claimants To Application Of Debtors Pursuant To 11 U.S.C. Sections 105,327 And 524(g)(4)(B)(i), For The Appointment Of A Legal Representative For Future Asbestos Claimants
5/14/2004	5575	United States Trustee's Statement Regarding Application of the Debtors for the Appointment of a Legal Representative for Future Asbestos Claimants
5/25/2004	5645	Order Granting Application of Debtors Pursuant to 11USC §105, 327 and 524(g)(4)(B)(i) for the Appointment of a Legal Representative for Future Asbestos Claimants
6/3/2004	5705	Notice of Appeal of Federal Insurance Company from Order Granting Application of Debtors Pursuant 11 U.S.C. §105, 327 and 524 (g)(4)(B)(i), for the Appointment of a Legal Representative for Future Asbestos Claimants
6/10/2004	5775	Notice of Appeal of Royal Indemnity Company From Order Granting Application of Debtors for the Appointment of a Legal Representative for Future Asbestos Claimants
6/11/2004	5793	Notice of Appeal Of The Official Committee Of Asbestos Property Damage Claimants From Order Granting Application Of Debtors Pursuant To 11 U.S.C. Sections 105, 327 And 524(g)(4)(B)(i), For The Appointment Of A Legal Representative For Future Asbestos Claimants.
T.B.D.	T.B.D.	Transcript of hearing before Bankruptcy Judge Judith K. Fitzgerald on May 24, 2004; Transcript Ordered; however, not transcribed and received to date

STATEMENT OF ISSUES

1. Whether the Bankruptcy Court erred in appointing a legal representative for future claimants without adequately and correctly instructing him at the outset (a) that his constituency includes, and he is the sole representative of, the potential future interests of asymptomatic individuals as “demand” holders; (b) that asymptomatics do not possess currently compensable “claims;” and (c) that asymptomatics accordingly are not “creditors” entitled to vote on plans of reorganization.

2. Whether the Bankruptcy Court erred in relying upon the actual conflict of interest disqualification standard of 11 U.S.C. § 327 in appointing the legal representative for future claimants instead of applying an appearance of impropriety disqualification standard.

3. Whether the Bankruptcy Court erred in appointing David Austern as legal representative of future claimants where (a) his “nomination” for the position by constituencies with conflicting interests creates an appearance of impropriety; and (b) his repeated employment as a legal representative for future claimants in multiple bankruptcies in a *de facto* system where conflicting constituencies are permitted to “nominate” their adversary’s representative creates an appearance of impropriety.

Dated: June 14, 2004

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